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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,679	12/27/2001	Edward B. Bretschger	28312/36075	9368

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EXAMINER

LUU, TUYET PHUONG PHAM

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/033,679	Applicant(s) BRETSCHGER ET AL.	
	Examiner Teri P. Luu	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 14, 15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 11, 14, 15 and 17 is/are allowed.
- 6) ☒ Claim(s) 1-9, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 20-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tompkins in view of Taylor.

Tompkins discloses a mattress comprising an internal support structure (39), an external cladding (43, 44, 45) that surrounds and covers at least a portion of the support structure, and a self-contained mattress vibrating device (6) having a motor. Tompkins fails to disclose that the vibrating device gradually slows to a controlled rate to a complete stop over a period of time when turned off. However, Taylor discloses a massager that gradually slows to a controlled rate to a complete stop over a period of time. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vibrating device of Tompkins so that the massager gradually slows to a controlled rate to a complete stop over a period of time, so as to prevent the sudden cessation of massage action which can abruptly awaken the user.

Taylor further teaches that the massager can be selectively operated at different vibration levels. Thus, it would have further been obvious to one having ordinary skill in the art at the time the invention was made to provide the massager with different vibration levels so as to provide the user with a variety of vibration selections.

3. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup in view of Taylor.

Jessup discloses a mattress comprising a support structure, a mattress cladding that surrounds and covers at least a portion of the support structure, and a self-contained vibrating

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device (32) "which may be removed from or replaced into the mattress from the exterior" (col. 1, lines 52-56). The vibrating device includes an exterior housing (30, 42). Part of the vibrating device is coupled (via magnetic flux) with part of the support structure for vibrating the mattress. Jessup fails to teach the vibrating device gradually slowing to a complete stop over a period of time when turned off. Taylor discloses a massager that gradually slows to a controlled rate to a complete stop over a period of time. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vibrating device of Jessup so that the massager gradually slows to a controlled rate to a complete stop over a period of time , so as to prevent the sudden cessation of massage action which can abruptly awaken the user.

Allowable Subject Matter

4. Claims 10, 11, 14, 15 and 17 are allowed.
5. Claims 7 and 20-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed August 11, 2003 have been fully considered but they are not persuasive.

Applicant argues that there is no suggestion or motivation within either the Taylor or Tompkins references that would lead one of ordinary skill in the art to alter the vibrating motor for a full body mattress according to the vibration characteristics of a head only massager. The examiner disagrees.

Both Tompkins and Taylor teach apparatuses having vibrating features. Tompkins vibrating motor does not provide a gradual slow down feature. This feature is clearly found in the vibrating motor of the Taylor reference. One of ordinary skill in the art, concerned with

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sudden cessation of vibratory motion in a full-body mattress which could awaken a sleeper, would have found it obvious to provide such a vibrating motor with a gradual cessation feature, as can be found in the Taylor reference. Thus, clearly, Taylor provides suggestion and/or motivation to alter the full-body mattress according to the vibration characteristic of the head massager.

7. Applicant's arguments with respect to claims 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

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Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the
Patent and Trademark Office (Fax No. _____) on (Date)

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly

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signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist at **(703) 308-2168**.

A handwritten signature in black ink, appearing to read 'Teri Luu', is positioned above the printed name and title.

Teri Pham Luu
Primary Examiner

tpl
October 14, 2003